

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

DOLENA GRAYSON,)	PERB Review of Hearing
)	Officer's Decision on the
Appellant,)	Pleadings
)	
v.)	
)	<u>ULP No. 13-05-903</u>
AMALGAMATED TRANSIT UNION, LOCAL 842,)	
and ROLAND LONGACRE,)	
)	
Appellees.)	

APPEARANCES

Dolena Grayson, Appellant, pro se
Roland W. Longacre, President/Business Agent, for Appellee, ATU Local 842

The Amalgamated Transit Union, Local 842 (“ATU”) is an employee organization within the meaning of §1302(i) of the Public Employment Relations Act, 19 Del.C. Chapter 13 (“PERA”). It is the exclusive bargaining representative of certain employees of the Delaware Transit Corporation (“DTC”) within the meaning of 19 Del.C. §1302(j). Roland Longacre is the current president of ATU Local 842.

The Charging Party, Dolena Grayson (“Grayson”) was at all times relevant to this charge a public employee within the meaning of §1302(o) of the PERA. Prior to being discharged, Ms. Grayson was employed by DTC, a public employer within the meaning of 19 Del.C. §1302(p). Ms. Grayson was a member of the bargaining unit represented by ATU Local 842.

On May 14, 2013, Charging Party filed an unfair labor practice charge with the Delaware Public Employment Relations Board (“PERB”) alleging conduct by the Respondent in violation of 19 Del.C. §§ 1304(a), 1307(b)(1) and 1307(b)(3).¹ The Charge alleged Ms. Grayson was treated differently than other members of the bargaining unit in the manner in which the ATU conducted the membership vote on whether to take the grievance protesting her discharge to arbitration. The Charge alleges the ATU President failed to properly inform the general membership of the scheduled arbitration vote to be conducted at its April meetings; inaccurately informed the members at the evening vote on April 9, 2013 that the Local’s Executive Board had unanimously voted against proceeding to arbitration on Ms. Grayson’s grievance; and violated the ATU by-laws by improperly voting on the grievance.

On May 23, 2013, the ATU filed its Answer denying the allegations set forth in the Charge. The ATU asserted neither the International constitution nor the Local 842 by-laws were violated in the manner in which the voting was conducted on whether to take the grievance to arbitration. The ATU also included New Matter in its Answer.

¹ §1304. Employee organization as exclusive representative.

(a) The employee organization designated or selected for the purpose of collective bargaining by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of all the employees in the unit for such purpose and shall have the duty to represent all unit employees without discrimination. Where an exclusive representative has been certified, a public employer shall not bargain in regards to matters covered by this chapter with any employee, group of employees or other employee organization.

§1307. Unfair labor practices.

(b) It is an unfair labor practice for a public employee or for an employee organization or its designated representative to do any of the following:

(1) Interfere with restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter;

(3) Refuse or fail to comply with any provision of this chapter or with rules and regulations established by the Board pursuant to its responsibility to regulate the conduct of collective bargaining under this chapter.

On May 31, 2013, Charging Party filed her response to New Matter denying the allegations set forth therein.

Upon review of the pleadings, the Hearing Officer concluded the pleadings failed to establish probable cause to believe that the violations alleged in the Charge may have occurred. Consequently, the Charge was dismissed in its entirety.

By letter received on June 28, 2013, the Appellant, Grayson requested the full Public Employment Relations Board review the Hearing Officer's decision, asserting "despite the [Hearing Officer's] reasoning, the PERA demands, as a matter of law, that I be represented by my bargaining unit without discrimination," citing §1304(a) of the statute. Grayson also alleged the discrimination was based on her being an African American female and asserted that with a hearing and the ability to subpoena witnesses and documents, she could prove her case.

A copy of the complete record in this matter was provided to each member of the Public Employment Relations Board. A public hearing was convened on July 17, 2013, at which time a quorum of the Board met in public session to hear and consider this request for review. The parties were provided the opportunity to present oral argument and the decision reached herein is based upon consideration of the record and the arguments presented to the Board.

DISCUSSION

The Board's scope of review is limited to the record created by the parties and consideration of whether the decision is arbitrary, capricious, contrary to law, or unsupported by the record. After consideration of the record and the arguments of the parties on appeal, the Board must vote to either affirm, overturn, or remand the decision to the Executive Director for further action.

PERB Rule 5.6 requires the designated Hearing Officer to review the pleadings to determine whether they are sufficient to establish probable cause to believe that an unfair labor practice may have occurred. The Rule also requires that when the pleadings reveal no probable cause to believe an unfair labor practice may have occurred, the charge shall be dismissed. A decision on the pleadings is subject to the same review by the full Public Employment Relations Board as any other final decision rendered by the Executive Director or her designee.

The standard for fair representation of bargaining unit members by an exclusive bargaining representative is well-established in Delaware PERB case law. “In order to meet its statutory obligation to represent its members without discrimination an exclusive employee representative has a duty to act honestly, in good faith and in a non-arbitrary manner.” *William v. Norton, et al*, ULP 85-10-006, I PERB 159 (Del.PERB, 1986); *AFSCME Council 81, Local 640 v. Alicia A. Brooks*, ULP 09-08-701, VII PERB 4587, 4589 (Del.PERB, 2010). The United States Supreme Court held that a union “may not arbitrarily ignore a meritorious grievance or process it in a perfunctory fashion...” *Vaca v. Sipes*, 386 US 171 (1967)

The Appellant admits that an ATU Shop Steward accompanied her to the pre-termination hearing and that the ATU President represented her in grieving her termination. The essence of her complaint is that she suffered arbitrary and/or discriminatory treatment by the ATU based on the manner in which her grievance was presented to the union’s membership for an arbitration vote. The Appellant alleges that notices announcing that her case would be considered for an arbitration vote during a regular monthly meeting of the union’s general membership were not posted. She also argued that the ATU President did not act “in her favor” when he presented the facts of her case to the union membership to consider whether to pursue her grievance to arbitration. She asserted very few members

attended the three general membership meetings and relies on the low attendance to conclude that, had notices been posted, more members would have attended the meeting and voted in her favor. She alleged in her opening that she needed to go to arbitration to fight for her job, but that the union conspired to keep her from getting to arbitration, “like everyone else.” She argued in her request for review (although not in pleadings in this matter) that:

As an African American female, if I reported that the union refused to represent me at all, and refused to have a membership vote like they do for everyone who is not a minority, clearly that would be discrimination! The result here is exactly the same as that. ATU 842 has had dozens of arbitration votes and they knew this would happen when they handled my case this way. This was deliberate, and with a hearing and the ability to subpoena witnesses and documents, I can prove it.

PERB Rule 5.6 requires the Hearing Officer (who serves as the Executive Director’s designee) to review the pleadings and determine whether they are sufficient to establish probable cause to believe that an unfair labor practice in violation of the statute may have occurred. In reviewing the sufficiency of a Charge for purposes of determining probable cause, this Board has held:

PERB Rule 5.2(c)(3) clearly states that a Charge must include “a clear and detailed statement of the facts constituting the alleged unfair labor practice, including the names of the individuals involved in the alleged unfair labor practice, the time, place of occurrence and nature of each particular act alleged, and reference to the specific provisions of the statute alleged to have been violated.” The Rule also requires the submission of supporting documentation, where applicable. When a Charging Party chooses not to include specific information which addresses this requirement in its Charge, it acts at its peril. Sufficient information must be included in pleadings to allow a preliminary assessment of the procedural and substantive viability of the charge, i.e., the probability that there is sufficient cause to continue to process the charge. *AFSCME Council 81, Local 3911 v. New Castle County, Delaware*, ULP 09-07-695, VI PERB 4445, 4450 (DE PERB on Review of Executive Director’s Decision, 2009).

In order to establish the ATU engaged in arbitrary or discriminatory behavior, in

violation of its duty of fair representation, the Appellant must establish (in the pleadings) that other, similarly situated employees were treated differently, or more favorably than she was, based on a prohibited motive. It is not enough to simply allege discrimination or a failure to represent because the outcome of an arbitration vote was not in the grievant's favor.

In this case, the Appellant has provided no supporting documentation or specific factual allegations to support her charge. In fact, the ATU Local 842 By-laws she appended to her Charge (Charging Party Exhibit 1) support the union's assertion that Local 842's general membership meetings are regularly held on the "second Tuesday of the month at 10:30 AM and 7:00 PM" in New Castle County and at 2:00 PM the follow Sunday for Tri-County. The relevant address for each meeting is included in Section 2, Meetings. These By-laws further state that the purpose of fixing the monthly meeting dates, times, and locations was to "assure that every member has a better chance to attend a meeting and to boost overall attendance thereby improving the meetings *[sic]* chances of having a Quorum." Section 2, subsection 3.

Section 34 of the Local's By-laws, Arbitrations, also states, in relevant part:

33.2 All decisions to go to arbitration shall be brought to the entire Union Membership for a vote within thirty (30) days, unless it is an arbitration of a defined area (Wilmington Fixed Route, Wilmington Maintenance, Dover Fixed Route, or Statewide Paratransit), but still will have to meet the thirty (30) day vote. Any reasonable questions will be answered as fully as possible. (Note: after step 3 in the contracts, the member has forty (45) *[sic]* days to request to go to arbitration. This means it can be brought to the entire membership at a regular union meeting that is held each month).

33.3 The vote is to be strictly on the merits of the subject to be arbitrated. (Note Personality, Attitude, Perceived work habits, cost or Group association shall have no bearing on the merits of said arbitration).

During the July 17, 2013 hearing before this Board, the Appellant, Grayson, stated

she had been notified by letter that her request for arbitration would be considered at the regular April, 2013, meetings of the Local's general membership. Prior to attending the three general membership meetings, the Appellant also attended the Executive Board meeting. The Appellant acknowledged she was given the opportunity at each of these four meetings to present her position and to appeal directly to the Local's Executive Board and then to the attending members at each of the general membership meetings to support her request for arbitration. Nothing in this record indicates the Appellant was denied access to the normal process for determining whether a grievance will proceed to arbitration, or that she was treated in an arbitrary or discriminatory manner.

Concerning the allegation that the meeting was not properly noticed, Section 18 of the By-laws, Duties of the President, directly contradicts the Appellant's assertion that notice was required to be posted announcing to the membership that her grievance would be considered for processing to arbitration at the April 2013 meetings. Section 18 clearly states that the President has the power to call "special meetings" as necessary; however, notice must be posted at least twenty-four hours in advance of any special meeting. As discussed above, the arbitration provision of the By-laws states that arbitration votes will be "brought to the entire membership at a regular union meeting that is held each month" and sets forth the date, time and location of every monthly membership meeting. The documents filed by the Appellant in support of her charge simply do not support her position.

A union has discretion to refuse to arbitrate grievances that the union reasonably concludes do not merit arbitration. *Vaca v. Sipes*, 386 US 171, 191-195 (1967). A union's actions are arbitrary only if, in light of the factual and legal landscapes at the time of the union's actions, the union's behavior is so far outside "a wide range of reasonableness" as to be irrational. *Airline Pilots v. O'Neill*, 499 US 65, 67 (1991).

The pleadings and argument of the Appellant are insufficient to establish that ATU

Local 842 acted in either an arbitrary or discriminatory manner, in violation of its statutory duty to fairly represent bargaining unit members, in the manner in which it determined not to take the Appellant's grievance to arbitration.

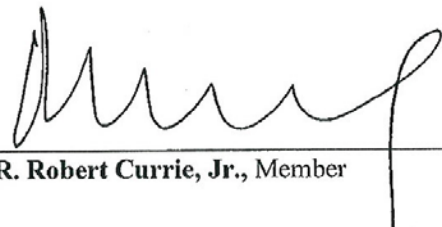
DECISION

After reviewing the record, hearing and considering the arguments of the parties, the Board unanimously affirms the decision of the Hearing Officer dismissing the Charge as unsupported by substantial evidence.

Wherefore, the appeal of the dismissal of the Charge is denied.

IT IS SO ORDERED.


KATHI A. KARSNITZ, Acting Chairperson


R. Robert Currie, Jr., Member

DATE: August 1, 2013